

Internal Revenue Service
memorandum

date: SEP 26 1991

to: District Director, Hartford, CT

Attention: Mr. James L. Russo, Revenue Agent

from: Chief, CC:CORP:3

Maura A. Sullivan by John N. Lisciani

subject: Request for Technical Advice -
TR-32-00120-91

Year(s) or period(s) involved:

☒ Attached is our memorandum in response to your request for technical advice in the case described above.

☐ Case returned for further development. (See remarks below).

Remarks:

The attached memorandum comes within the scope of section 6110 of the Code and will accordingly be made open to public inspection in the National Office Public Reading Room. This will normally occur 75-90 days after the date of mailing of the enclosed "Notice of Intention to Disclose." Please see IRM 4550, which discusses the procedures to be followed in furnishing the taxpayer with various documents and advising the National Office of the commencement of this 75-90 day period.

A copy of this transmittal memorandum should not be furnished the taxpayer.

Attachments:

Copy of this memorandum

Original and two copies of Technical Advice memorandum

Copy of Technical Advice memorandum edited for 6110 purposes

Copy of Notice of Intention to Disclose

Copy of Technical Advice dating schedule

Submitting office case file (if any)

Distribution: Copy of each memorandum to: (Check appropriate blocks)

☐ ARC (Examination) _____ Region ☐ Reg. Dir. of Appeals, _____ Region

☐ CP:E:E:E ☐ CP:AP

This form is *not* to be used to transmit Technical Advice memorandums involving civil fraud, criminal investigations, or jeopardy or termination assessments. See IRM (11)1(12)5:(6).

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subject: Attachment to transmittal memorandum

TR-32-00120-91

The accumulation of earnings and distribution of those earnings to shareholders of [REDACTED] (" [REDACTED] ") (i.e. [REDACTED] (" [REDACTED] ") and [REDACTED] (" [REDACTED] ")) who retain an interest in essentially the same corporation ([REDACTED] (" [REDACTED] ") appears to be the alter ego of [REDACTED], see Telephone Answering Service Co., Inc. v. Commissioner, 63 T.C. 423 (1974), aff'd per curiam, 546 F.2d 423 (4th Cir. 1976), cert. denied, 431 U.S. 914 (1977)) raises certain concerns that may merit additional consideration:

- (1) Accumulated earnings tax. [REDACTED] paid dividends from [REDACTED] to [REDACTED], but did not pay any dividends in [REDACTED] and [REDACTED] in anticipation of the merger. Section 531 et seq of the Code may apply to this accumulation.
- (2) Dividend treatment of redemption of [REDACTED]'s stock. [REDACTED] redeemed [REDACTED] shares of [REDACTED] stock from [REDACTED] in the merger. In light of [REDACTED] continued equity participation in [REDACTED], the redemption of the [REDACTED] shares may constitute a dividend to [REDACTED] under section 302(d) of the Code.
- (3) Dividend treatment of redemption of [REDACTED]'s stock. Presumably, [REDACTED] received [REDACTED] shares of [REDACTED] stock through the disclaimer. The facts do not indicate whether he held this stock at the time of the merger. If [REDACTED] redeemed this stock from [REDACTED] in the merger, this redemption may constitute a dividend to [REDACTED] under section 302(d) of the Code.


If the facts do not support a finding that [REDACTED] is the alter ego of [REDACTED], it should be determined whether the merger qualifies as a tax-free reorganization under section 368 of the Code. Qualification of the merger under section 368 will affect

whether the [REDACTED] recognizes gain on the transfer and the treatment of the redemptions of [REDACTED] and [REDACTED]'s stock.

If you have any further questions or would like to discuss the issues raised by this response, please feel free to contact Lesa R. Byrnes at FTS 566-6212.

Chief, CC:CORP:3

By


John N. Geracimos
Assistant to the Chief
Branch 3